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No. 430] NEW DELHI, WEDNESDAY, OCTOBER 15, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 15th October 1952

No. 19/27/52-Elec.III.—WHEREAS the election of Shri Lalit Bahadur Kharga of Development Area, Kalimpong, West Bengal, as a member of the Legislative Assembly of West Bengal from the Kalimpong constituency of the said Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Tika Ram Sharma of Kumudini Home, Kalimpong, West Bengal;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, WEST BENGAL.

ELECTION PETITION No. 27 of 1952.

Election Case No. 1 of 1952 of West Bengal.

Coram

Sri S. C. Ray Chaudhuri, M.A., LL.B.Chairman.

Shri S. K. Bhose, M.Sc., LL.B. }

Sri M. N. Gan, M.A. LL.B. }

Members of the Tribunal.

In the matter of an application under Section 81 and 84 of the Representation of the People Act, 1951.

and

In the matter of Tikaram Sharma, residing at "Kumudini Home" at Kalimpong, District Darjeeling.....Petitioner.

Versus

1. Lalit Bahadur Kharga, residing at Development Area, Kalimpong.
2. Gajendra Singh Bhandari, residing at Ninenth Mill, Kalimpong.
3. M. K. Prodhan, residing at Teksaria House, Kalimpong.
4. Krishna Chandra Prodhan, residing at Development Area, Kalimpong.

All within the State of West Bengal ... Respondents.

For petitioner.....Shri B. K. Lahiri, Advocate.

For respondent No. 1.....Shri Sadhan Gupta, Counsel.

JUDGEMENT

The petitioner Tikaram Sharma was a candidate from the Kalimpong Assembly Constituency to the State of West Bengal at the election which was held on the 15th January 1952. It is a single-seated constituency. On 19th November 1951 he delivered two nomination papers to the Returning Officer, Dr. B. K. Bhattacharya. There were in all 8 candidates. Only 4 nominations of the respondents were accepted. Both the nomination papers of the petitioner were rejected at the time of scrutiny on 21st November 1951 on the ground that the parts of the electoral roll were not mentioned in the entries relating to the serial number of the petitioner, his proposer and his seconder.

Later, two of the duly nominated candidates, respondent No. 3, M. K. Prodhan and respondent No. 4, Krishna Chandra Prodhan having withdrawn their candidature, there was contest between the two remaining candidates, viz., respondent No. 1, Lalit Bahadur Kharga, the nominee of the Communist Party and respondent No. 2, Gajendra Singh Bhandari, the Congress nominee. The respondent No. 1, Lalit Bahadur Kharga, was returned and the result of the election was published in the Calcutta Gazette on the 14th February 1952.

This election petition has been filed calling into question the election of the returned candidate, Lalit Bahadur Kharga on the grounds that the nomination papers of the petitioner were improperly and wrongfully rejected and thereby the result of the election was materially affected and as such, the election held on 15th January 1952 was wholly void.

The petitioner being a Gorkha League nominee has further alleged that All-India Gorkha League is one of the most popular parties in the district of Darjeeling and has great hold on the masses inhabiting the said district and there being substantial number of electors among the supporters of Gorkha League in Kalimpong constituency the right of franchise could not be properly exercised by a large number of electors.

In paragraphs 11 and 12 of the Election Petition certain allegations have been made against the Returning Officer, Dr. B. K. Bhattacharya for holding the scrutiny contrary to the provisions of the law and the rules framed under the Representation of the People Act 1951.

Notices with copies of the Election Petition were duly served on the respondents in due course. The respondent No. 1, Lalit Bahadur Kharga alone contests the case.

Although the Returning Officer, Dr. B. K. Bhattacharya has not been made a party, a copy of the Election Petition has been served on him to give him opportunity to appear and defend his position, if necessary, in view of the allegations made against him. He appears at the time of hearing, but the allegations made in paragraphs 11 and 12 of the Election Petition being not pressed and no evidence being adduced in support of such allegations, he has no occasion to take any steps. He has accordingly been discharged.

The respondent No. 1 contends that the Returning Officer rightly rejected the nomination papers of the petitioner according to law and the result of the election was not materially affected by such rejection. Contradicting the petitioner's allegations about the influence of the Gorkha League, it has been asserted that the Communist Party of India is the majority party in the locality, hence the result of the election has not prejudiced the petitioner in any way as stated in the Election Petition.

Issues were settled upon the pleadings at the preliminary stage hearing the lawyers of both parties, as follows:—

ISSUES

1. Were the nomination papers of the petitioner, Sri Tikaram Sharma wrongly rejected and were the orders of rejection wrongful and illegal?
2. Can the election of the returned candidate Sri Lalit Bahadur Kharga be declared void?
3. Is the election held on 15th January 1952 in respect of the Kalimpong Constituency to the State of West Bengal liable to be set aside and should fresh election be directed?
4. What relief, if any, are the parties entitled to?

FINDINGS

Evidence has been adduced by both the contesting parties. Two material points arise for determination in view of the evidence, viz., (1) were the nomination papers of the petitioner rejected improperly on the ground of technical defects not of a substantial character within the meaning of Section 36(4) of the Representation of the People Act 1951, and (2) has the result of the election been materially affected on account of such rejection of the nomination papers of the petitioner, within the meaning of Section 100(1) (c) of the Representation of the People Act, 1951?

The duties and the scope of authority of the Returning Officer have been discussed at length by the learned lawyers of both parties. Mr. B. K. Lahiri for the petitioner has traced the history of the English Election Law referring to the provisions in the old Ballot Act of 1872 and the present Representation of the People Act (England), 1949 and has contended that the Indian Law on the subject has been based on the Ballot Act of 1872. Section 13 of the Ballot Act 1872 provided that "no election shall be declared invalid by reason of a non-compliance with the rules contained in the first Schedule to the Act, or any mistake in the use of the forms in the second Schedule to this Act, if it appears to the Tribunal having cognizance of the question that the election was concluded in accordance with the principle laid down in the body of the Act, and that such non-compliance or mistake did not affect the result of the election." The underlying principle viz., that the rules framed under the Act are not mandatory but are only directory and that no meticulous accuracy should be insisted upon in filling up the Forms which are prescribed by the rules, is discussed. The learned counsel for the contesting respondents does not consider it necessary to discuss the English Laws in order to trace the history of the present Indian Law. Academic discussion on the subject is therefore unnecessary.

The present Indian Law on the subject is substantially based on the old Legislative Assembly Electoral Rules & Regulations (corrected up to 8th September 1945) that were framed under the Government of India Act, 1935. The duties to be performed by the Returning Officer during the presentation of the nomination papers and at the time of the scrutiny of nominations have been expressly provided in the Representation of the People Act 1951. Several reported cases decided under the old election laws have been cited as the principles applicable remain the same under the new law. The particular footnote in the Form of the Nomination paper, viz "note (6): where the electoral roll is subdivided into parts and separate serial numbers are assigned to the electors entered in each part, a description of the part in which the name of the person concerned is entered *must* also be given in Items Nos 8, 10 and 14," is to all intents and purposes identical with the note in the old form of the nomination paper which ran thus—

"* where the electoral roll is subdivided and separate serial numbers are assigned to the electors entered in each subdivision, a description of the subdivision in which the name of the person concerned is entered *must* also be given here"—vide Legislative Assembly Electoral Rules & Regulations (corrected up to the 8th September 1945) Schedule III. p.43. Asterisk in this note refers to the items corresponding to the items Nos 8, 10, and 14 of the nomination paper now in use. The only difference between the two note is that in the old note the word "subdivision" was used and in the present note the word "part" has been substituted for "subdivision".

Now it is evident that the use of the word "must" in Note (6) referred to above gave rise to the controversy and the Returning Officer interpreted that the instructions given in the note are mandatory.

Section 33(1) of the Representation of the People Act 1951 requires that the nomination paper completed in the prescribed form shall be delivered to the Returning Officer. The form has not been prescribed in the Act itself. Section 169 of the Act gives power to the Central Government to make rules after consulting the Election Commission. Rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 states that the Form has been specified in Schedule II. Section 33(5) of the Act enjoins that "on the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and the proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that the Returning Officer may—

- (a) permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and

(b) where necessary, direct that any clerical or printing error in the said entries shall be overlooked.”.

Section 34 of the Act deals with compulsory deposit of money as condition precedent to due nomination.

Section 36 of the Act lays down the procedure for scrutiny of nomination. Sub-Section (2) of the Section defines the duties of the Returning Officer during scrutiny. It runs thus:

“The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, *after such summary enquiry*, if any, as he thinks necessary, refuse any nomination on any of the following grounds:—

- (a)or
- (b)or
- (c)or
- (d) that there has been any failure to comply with any of the provisions of Section 33 or 34; or
- (e) ”

We are concerned in this case with clause (d) above. Sub-section 4 of Section 36 of the Act clearly provides:—

“The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character.”

The petitioner has stated in his evidence that when he presented the nomination papers the Returning Officer compared the entries in the nomination papers with the electoral rolls with the help of his staff. It is contended that the Returning Officer satisfied himself as required by section 33(5) of the Act as to the correctness of the names and electoral roll numbers, and he apparently overlooked the minor defects for non-mention of the description of the parts of the electoral rolls, and, as such, he could not under the law revise his previous decision during scrutiny and reject the nomination papers, except on the grounds of legal disabilities or material and substantial defects or irregularities. We cannot uphold the contention that the Returning Officer had no jurisdiction to revise his opinion at the time of scrutiny. The satisfaction of the Returning Officer at the time of the representation of the nomination paper cannot be deemed to be tantamount to any decision. The law requires that the Returning Officer is bound to make enquiry before rejecting a nomination paper. “When carrying out the scrutiny of nominations the Returning Officer is performing a judicial function, he should conform to judicial standard and should not mechanically reject nomination on account of unsubstantial irregularities. He should not regard the provision authorising him to hold a summary enquiry a dead letter. If any obscurity can be cleared up there and then by a summary enquiry, he should not shirk from holding the enquiry” [Punjab Anglo-Indian Case, Sen and Poddar, P. 66—Doabla Indian Election Cases 247—vide also Nanak Chand Pandit’s law of Elections and Election Petitions in India (1951) p. 133]. If there is a reasonable doubt as to whether the entries relate to the petitioner, the proposer and the seconder or not, he should try to clear it up, if possible by a summary enquiry. [South-West Towns (Punjab) General Constituency Case 1937, Doabla I.E.C. 105—Sen and Poddar P. 787].

The principal question in this case will be whether there was a mere technical defect not of a substantial character, and as such it could not justify the rejection of the nomination papers. It is not contended in defence that the word “must” in Note 6 printed on the nomination paper is to be interpreted literally and that it implies a mandatory direction of the law. The learned counsel for the contesting respondent No. 1 supports the order of the Returning Officer, rejecting the nomination papers, on the ground that the defects were not technical but were of substantial character. He has attempted to distinguish the cases cited by the learned advocate for the petitioner and has relied mainly on two cases, viz., Punjab North-East Town’s Case (N.M.) reported in Jagat Narain Vol. II, p. 143 and Saharanpore District Case (N. M. Rural) reported in Jagat Narain Vol. IV, p. 96. Before dealing with those two cases we may consider the rulings referred to by the learned advocate for the petitioner, viz.,

- (i) Nur Mohammad—Vs. Khan Sahib S. M. Solaiman (49C. W. N. 10).
- (ii) Calcutta South Case (Khanna Vol. II, p. 98).
- (iii) Midnapur South Case (Khanna, Vol. II, p. 191).

- (iv) South-East Punjab Sikh Constituency Case (Sen and Poddar, p. 778).
- (v) Ambala North (Sikh) Rural Constituency Case (Sen and Poddar, p. 10).
- (vi) Batala Sikh Rural Constituency Case (Sen and Poddar, p. 122).
- (vii) Satara South General Rural Constituency Case (Sen and Poddar, p. 741).
- (viii) Anglo-Indian (Punjab) Case (Sen and Poddar, p. 66).

(i) Nur Mohammad vs. Khan Sahib S. M. Solaiman (49 C. W. N. 10) is a Calcutta Municipal Election case. The serial number of the electoral roll in respect of the seconder in a nomination paper was wrongly stated as 12, his real serial number being 102. It was considered to be a technical defect which can and should be corrected by the Returning Officer according to Municipal Election Rules. It has been rightly contended by the learned counsel for respondent No. 1 that the Municipal Election Rules give wider powers to the Returning Officer not only to direct amendment but himself to alter or amend any entry in the nomination paper, [vide Rule 8 of the Rules for the Conduct of Elections (Local Self-Government) dated 18th September, 1950, which corresponds to the old Rule 9, paragraphs 1 and 2 referred to in the ruling], while Section 33(5) of the Representation of the People Act, 1951 does not authorise the Returning Officer to do any such act, hence this ruling has no application to this Assembly Election case. Proviso to Section 33(5) of the Representation of the People Act, 1951 only permit correction of any clerical error and where necessary direct any clerical or printing error to be overlooked. In this case there was omission to mention parts of the sub-division. It requires consideration independently of this ruling if the error of omission was of a technical nature and not of a substantial character within the meaning of section 36(4) of the Representation of the People Act, 1951.

(ii) In the Calcutta South Case (Khanna, Vol. II, p. 98). the question was whether the omission to record the date of declaration in the nomination papers is a mere technical irregularity, which does not vitiate the nomination papers. Such omission was regarded as a technical irregularity. The Bengal Electoral Rules of 1923 being entirely silent about the date, the omission was not held to be fatal to the validity of the nomination (vide p. 99). The learned counsel for respondent No. 1 distinguishes this case on that ground.

(iii) In the Midnapore South Case (Khanna, Vol. II, p. 191—Jagat Narain, Vol. II, P. 113) the omission to fill the candidate's electoral number on the nomination paper was held not to be a vital defect so as to make the nomination invalid. The circumstances of that case were somewhat peculiar. Bengal Electoral Rules of 1920 did not require the insertion of the electoral roll number. There was amendment of the rule in 1923 before the nomination paper was filed, but the candidate was not then aware of the said amendment. He procured the roll number and the Returning Officer was placed in possession of that fact before the scrutiny. The electors of the Constituency had opportunity of testing whether the candidate was a duly qualified elector, as the description of the candidate (a Rai Bahadur) with necessary electoral roll had been affixed in a conspicuous place. In view of these circumstances the learned defence counsel distinguishes this case from the present one.

(iv) In South-East Punjab Sikh Constituency (1937) Case (Sen and Poddar, pp. 778—779) it has been observed that when there is any reasonable doubt regarding the identity of the petitioner with the person to whom the electoral roll number given in the nomination papers related, it is the duty of the Returning Officer to hold enquiry to clear the doubt. The nomination paper was rejected on the ground of mistake in spelling the candidate's father's name. The Commissioners were of opinion that meticulous accuracy in filling in the nomination papers should not be insisted upon. Attempt is made to distinguish this case contending that there was a single error not of a substantial character. The principles laid down are, however, referred to in support of the petitioner's case.

(v) In Ambala North (Sikh) Rural Constituency (1937) Case reported in Indian Election Cases by Sen and Poddar, p. 10, a similar question as in the present one regarding omission to specify in the nomination paper the description of the part of the sub-division of the constituency in which the name was entered did arise. The electoral rolls in that case had five sub-divisions and each sub-division was divided into two parts. The object of naming the sub-division is to enable the Returning Officer or any elector to refer to the electoral roll in order that the identity of the candidate, the proposer or the seconder, as the case may be, may be established. As the Returning Officer could quickly refer to the relevant entry in the electoral rolls, the rejection of the nomination paper was held to be improper. The provision to enter the description of the part in the nomination paper was not

considered to be mandatory and it was observed that if the provision had been of such a stringent character, it would not have been relegated to a "Footnote". Contrary decisions in Ambala Division Case, (Khanna, Vol. IV, p. 22—Hammond, page 77) and Raipur North Case (Khanna Vol. II, p. 231—Jagat Narain, Vol. II, p. 146) have been distinguished on the ground that the omissions to give description of the sub-division in those cases were considered to be highly material. It has been argued by the learned defence counsel that in the case before us the electoral rolls being subdivided into numerous parts, the Returning Officer could not be expected to fish out the particular entries, hence there was no substantial compliance, though meticulous accuracy may not be insisted upon in view of the trend of the several decisions referred to in the ruling. It will be seen that in the present case the descriptions given in the nomination papers could enable the Returning Officer or the elector to find out the particular entries without much fishing. We propose to discuss the facts of the case in details later.

(vi) Batala Sikh Rural Constituency (1946) case (Sen and Poddar, p. 122) has next been placed before us in support of the contention that the omission to describe the sub-division of the electoral roll cannot be fatal to the nomination and the provisions as to filling in of nomination forms are merely directory and substantial compliance only is required. Numerous decisions reversing or upholding the orders of rejection of nomination papers by Returning Officer have been referred to, approved, or distinguished in this case. The Ambala Division Case (Khanna, Vol. IV, p. 22—Hammond, p. 77) and the Raipur North Case (Jagat Narain, Vol. II, p. 146) have been distinguished in the same manner as in Ambala North (Sikh) Rural Constituency Case (Sen and Poddar, p. 10 already referred to). The Commissioners relied on the Palamau Case (Jagat Narain, Vol. III, p. 228), Bhandara Case (Jagat Narain, Vol. IV, p. 22) and Ambala North (Sikh) Case (Sen and Poddar, p. 10, already discussed). The Palamau case (at page 230) clearly laid down the proposition that the Returning Officer is required to decide both on the validity of the nomination paper and also as to the identity and eligibility of the candidate. In that case there was omission to mention the sub-division. The constituency was sub-divided into 16 polling areas, each of which was assigned a separate set of serial numbers. As in the present case there was no objection as to the identity and eligibility of the persons concerned. The object of naming the sub-division being fulfilled, rigid adherence to the electoral roll was considered not necessary. In the Bhandara Case at pp. 26-27, the question involved has been fully discussed and it has been observed that the omission to mention the sub-division does not go to the root of the validity of the nomination paper. Defence counsel practically attempts to distinguish the Batala Case on the ground that the task of the Returning Officer was less laborious, but it will be seen that in this case also the task was much easier.

(vii) In the Satara South General Rural Constituency (1947) Case (Sen and Poddar, p. 741) an original electoral roll prepared in 1941 was adopted in 1946, adding a supplement. There was omission to mention whether the name appeared in original electoral roll of 1941 or in supplementary electoral roll of 1946. It is argued in defence that the facts of this case are of a different nature and omission was very trivial, so this case cannot much help the petitioner. The principle, however, remains the same.

(viii) Much reliance has been placed by the learned advocate for the petitioner on the Anglo-Indian (Punjab) Case (Sen and Poddar, p. 66) in which all the contrary decisions in Saharanpore District N. M. R. (Jagat Narain, Vol. IV, p. 143), Punjab North-East Town (Jagat Narain, Vol. II, p. 143), Raipur North (Jagat Narain, Vol. II, p. 146) and Ambala Division (Hammond 77—Khanna, Vol. IV, p. 22) cases have been discussed and distinguished. In the Anglo-Indian Case, the electoral roll was comprised of 30 booklets, each sub-divided into two parts, having separate serial numbers in every part. The total number of electors were, however, much less, namely, 811 only. The learned counsel for the respondents argues that this case is distinguishable as the Returning Officer could find out the names without much difficulty from the small booklets. Most of the decisions cited by the learned advocate for the petitioner in support of his contention have been discussed in this Anglo-Indian Case. We have already considered them.

The contrary decisions referred to by the learned counsel for the respondent No. 1 may now be looked into. In the Saharanpore District N. M. R. case (Jagat Narain, Vol. IV, p. 96) without deciding whether the rule requiring the name of the sub-division to be given in the nomination paper was mandatory or merely directory, it was found that there was not even a substantial compliance with the said rule. There were little over 38,000 voters on the roll. The electoral roll was divided into 19 sub-divisions in which separate numbers were assigned to the

electors. The nomination paper omitted to give even the name of the sub-division on which the names of the candidates, the proposer and the seconder were entered. The case before us is distinguishable as the names of the principal sub-divisions have been mentioned, but only the descriptions of the parts (marked "A") of the sub-divisions have been omitted.

In the Punjab North-East Town Case (N.M.) (Jagat Narain, Vol. II, p. 143 at pp. 145-146) it was held that even if the filling in of a nomination paper falls within the directory part of the rules, there must be a substantial compliance with the directions. The relevant entry in the nomination papers which raised the controversy ran thus:—

"549 (Ward No. 5)"

There were 13 sub-divisions in the constituency and several of them had a ward No. 5. The Commissioners observed that it was not the duty of the Returning Officer to search every sub-division of the electoral roll to find out if there was a correct entry. The present case is quite distinguishable, as the main sub-divisions being named, the Returning Officer could refer to them at once and find out the correct entries quickly.

In the Raipur North (N.W.R.) Case (Jagat Narain, Vol. II, pp. 146-147) the constituency in question spread over three districts and the electoral roll had three sub-divisions. No name of the sub-division was given in the nomination paper.

The omission could not be deemed to be a trivial one because the entry "No. 119" in the nomination paper might conceivably refer to the rolls of other two sub-divisions, which in the ordinary course of matters, the Returning Officer would not have before him. The facts of this case are quite different.

Lastly in the Ambala Division Case (Khanna, Vol. IV, p. 22 at pp. 23-24) the entry as regards the proposer was "No. 145, Ward 3" and as regards the seconder "No. 127, Ward 3". The electoral roll was subdivided into a number of parts. It was held that there was no substantial compliance so as to enable the Returning Officer or the electors to identify readily the proposer and the seconder and, as such, the nomination paper was rightly rejected. The entries in the nomination papers in the case before us were sufficiently clear to indicate the sub-divisions of the electoral rolls.

We will now discuss the material facts of the present case.

The petitioner Tikaram Sharma submitted two nomination papers (Ext. 1 and 1a). Against item No. 7 "constituency in the electoral roll of which the name of the candidate is included", the following entry was made in both the papers:—

"Kalimpong Constituency, Kalimpong Municipality (Ward No. VI)"; and against item No. 8 only the number "555" was entered. The proposer Pancharatna Prodhan and the seconder Kaloo Singh Roy of the nomination paper Ext. 1 (Serial No. 6) have been examined as witnesses. Items Nos. 10 and 14 of the nomination paper were respectively filled in as follows:—

Item No. 10—"961 Bhalukhop (Khas Mahal)".

Item No. 14—"258 Ward No. II, Kalimpong Municipality".

These items 10 and 14 relate to the numbers of the proposer and the seconder respectively in the electoral rolls of the constituency.

From the complete electoral roll of the Kalimpong Constituency (stitched up in one volume) which is before us, we find that the roll is subdivided according to villages and municipal wards. There are, of course, numerous sub-divisions, but each sub-division is named after the village or municipal ward. On the cover page of the volume containing the electoral rolls of the entire Kalimpong Constituency, there appears the following entry:—

"Part A—Original roll

Part B—Supplementary roll

Part E—Further addenda and corrigenda

This volume does not contain Part C".

Part A and Part B are the principal parts containing the names and the numbers of the electors. The description of such parts "A" and "B" are not printed on the electoral rolls, but there are rubber stamp impressions such as "Part A—Original Roll" on the printed roll with general heading "Electoral Roll" "Part B—Supplementary Roll" on the other printed roll with general heading "Supplementary

Electoral Roll." In filling up the nomination papers the rubber stamp impressions indicating the parts were either ignored or inadvertently missed. The sub-division of the electoral roll in which the name of the candidate Tikaram Sharma appears is thus described:—

"Kulimpong Municipality (Ward No. VI)".

In Part A of that roll there are 572 electors and the number of the candidate Tikaram Sharma is 555. In Part B supplementary roll there are only 131 electors. The name of the sub-divisions being clearly mentioned in the nomination papers the Returning Officer could at once get hold of both the parts of that sub-division and without wasting much time and labour, find out the correct entry from Part A. He could have no occasion to turn to Part B which contains only 131 names. There was no question of any doubt as to the identity and eligibility of the candidate. It was not a case of fishing or laborious search as contended by the learned defence counsel. We are of opinion that the omission to mention the part of the sub-division in this case so far as the candidate is concerned, is a very minor technical defect, not at all of a substantial character.

The omissions to mention the parts of the sub-divisions of the electoral rolls in which the names of the proposer and the seconder appear are also of similar nature. The name of the proposer Pancharatna Prodhan (P.W. 2) appears in the electoral roll of the sub-division "Village—Bhalukhope (Khasmahal)", Part A—Original Roll. His number is 961 and the total number of electors in this roll is 1203. Part B—Supplementary Roll is a half sheet of paper in which there are only 21 names. There could not arise any difficulty in finding out the correct entry in the name of the proposer, as the sub-division was clearly described in the nomination paper, Ext. 1, though Part A was not mentioned. Seconder Kaloo Singh Roy (P.W. 2) is an elector of the subdivision "Kulimpong Municipality (Ward No. II)". The nomination paper Ext. 1 contains this name of the sub-division, though Part A is not mentioned. The seconder's number is 258 in Part A—Original Roll containing 569 names. In Part B—Supplementary Roll there are only 90 electors. No difficulty would arise in finding out the correct entry. The identity and the eligibility of the proposer and the seconder are not questioned. The electors could without any difficulty find out the names of the candidate, the proposer and the seconder referring to the electoral rolls of the different sub-divisions the names of which were clearly stated though the Part "A" was not specified.

Similarly in the nomination paper Ext. 1(a) (Serial No. 7) the names of sub-divisions of the electoral rolls in which the numbers of the proposer, Briss Edward Prodhan and the seconder, Ninlay Bhutia appear were clearly mentioned, though it was not stated that there names are to be found in Part A—Original Roll. Briss Edward Prodhan is elector No. 58 in Part A of the sub-division "Village Keshyone (Khas Mahal)" wherein 543 electors were registered. In Part B—Supplementary Roll of that sub-division there are only 31 names. Seconder Linlay Bhutia in Ext. 1(a) is elector No. 604 in the roll of the sub-division "Village Echhey (Khas Mahal)" having a total number of 915 electors in Part A—Original Roll. In Part B—Supplementary Roll, there are only 55 names. Thus it is clear that no difficulty could arise in finding out the correct entries relating to the proposer and the seconder of this nomination paper Ext. 1(a), if the Returning Officer took up the electoral rolls of their respective sub-divisions. Nor the electors could be in any difficulty in ascertaining their identity and eligibility.

The Returning Officer rejected the nomination papers stating as follows: "I have scrutinised the eligibility of the candidate, the proposer and the seconder, and find that the names and electoral roll numbers of the candidate and of his proposer and seconder as entered in the nomination paper as given in items 8, 10 and 14 are not exactly the same as entered in the electoral rolls. The electoral rolls in the present case are divided into parts, but the entries in the aforesaid items do not contain a description of the relevant parts. This objection was raised in a previous case by Sri M. K. Prodhan, and I consider the objection valid for the reason stated above. Vide Section 33(5) of the Act, Section 2(d) of the Rules, and Note (6) in the Form of the Nomination paper. Hence the nomination paper is rejected." Rule 2 (d) of the rule referred to above gives definition of "Serial number of an elector in an electoral roll", which "include such particulars regarding the name or description of the electoral area in reference to which the said electoral roll has been prepared as will identify the entry relating to such elector in that electoral roll".

The judicial decisions cited before us have clearly laid down that the nomination papers should not be rejected on the ground of omission in mentioning the sub-division, if the defect be technical and not of a substantial character. Provision has been made in Section 36(4) of the Representation of the People Act,

1951, clearly to guard against improper rejection on such grounds by the Returning Officer. This salutary provision in the Act itself has apparently been ignored in this case. In the Footnote (6) of the printed prescribed form the word "part" has been used substituting the word "sub-division" which appeared in the form prescribed by the previous electoral rules and regulations framed under the Government of India Act, 1935. This change in phraseology does not make any material difference. It is abundantly clear from the present law itself that no meticulous accuracy need be insisted upon in filling up the nomination papers according to the instructions in the footnote of the form, but substantial compliance will be sufficient. There has been sufficient compliance in this case.

We accordingly hold that both the nomination papers of the petitioner Tikaram Sharma were improperly rejected by the Returning Officer.

(2) The next question is, whether the improper rejection of the nomination papers of the petitioner Tikaram Sharma has materially affected the result of the election. It has been uniformly held in numerous cases that when the nomination paper of a candidate has been improperly rejected, the ordinary presumption is that the result of the election has been materially affected. In the Agra District Case (Jagat Narain, Vol. IV, p. 4 at pp. 17-18) it was observed that it was so grave an irregularity that this presumption would require the strongest and most conclusive proof for its rebuttal and it lies heavily on the respondent to rebut the presumption so raised. In support of this general principle references have been made to several English and Indian decisions in that case. Calcutta South Case (Khanna, Vol. II, P. 98 at p. 100—Jagat Narain, Vol. II, p. 60 at p. 62), Ambala North (Sikh) Rural Constituency Case (Sen & Poddar, p. 10 at p. 14), Batala Sikh Rural Constituency Case (Sen & Poddar, p. 122 at pp. 127-128) and the Anglo-Indian Constituency (Punjab) Case, (Sen & Poddar, p. 66 at p. 74), support this view. It is well settled that if the nomination papers of a candidate is improperly rejected, the result of the election is presumed to have been materially affected thereby within the meaning of section 100(1) (C), of the Representation of the People Act, 1951, in as much as the entire electorate is deprived of its right to vote for a candidate who was qualified to stand (*vide* Nanak Chand Pandit's Law of Elections and Election Petitions in India, p. 138). The democratic principle is, that the electors should be given opportunity to vote for the candidate of their choice and no candidate should be shut out on technical ground. The learned defence counsel does not dispute this principle but he contends that sufficient evidence of rebuttal has been adduced on behalf of the respondent No. 1, Lalit Bahadur Kharga. The said respondent states in his evidence that of the three parties, the Communist, Congress and Gorkha League, the Communist Party has great influence in Kalimpong both among Gorkhas and non-Gorkhas, and the petitioner Tikaram Sharma being a Gorkha League nominee had no chance of success, because the Gorkha League has no influence among non-Gorkhas. It is alleged that even Gorkhas support the Communist Party in sufficient number. The question of success or failure of the petitioner cannot be the criterion to determine whether the result of election has been materially affected by the improper rejection of his nomination. None can possibly foresee the result of an election and speculative evidence on that question cannot have any value. The fact remains that the electors have been improperly deprived of the freedom of exercising their right of franchise by selecting the candidate of their choice from among those who are eligible to remain in the field. The petitioner has been defeated in a subsequent municipal election in respect of a pocket constituency having only 150 voters, within which he does not reside. This fact cannot weigh against his chance of election from the big Assembly constituency. The defence argument based on this fact cannot be deemed to have any force. The petitioner, on the other hand, says that the Communist candidates contested 4 general seats in Kalimpong Sub-division and lost in all other except in this constituency where there was no Gorkha League candidate on account of the rejection of his nomination paper; whereas the Gorkha League candidates were successful in three other constituencies in the area. To explain away this evidence regarding respective party influence the respondent No. 1 alleges that the ten garden managers unduly influenced their labourers to vote against the Communist candidates and not to support them though the Communist Party has greater influence among the tea garden labourers. It is argued that the Communist candidates being too poor have not challenged the elections by raising objections during election or instituting cases on the ground of undue influence. We cannot hold that such assertions and denials have rebutted the presumption that the improper rejection of petitioner's nomination papers has materially affected the result of the election. This question is accordingly decided in petitioner's favour and we hold that the result of the election has been materially affected by the improper rejection of the nomination papers of the petitioner Tikaram Sharma.

In this view of the case the Tribunal holds the election as wholly void. The election of the returned candidate Lalit Bahadur Kharga to the West Bengal Legislative Assembly accordingly becomes void as a matter of course. As regards fresh election in respect of which Issue No. 3 was framed, it is for the Election Commission to deal with the question under section 150(1) of the Representation of the People Act, 1951.

The question of costs remains for consideration. The respondent No. 1 did not oppose the nomination of the petitioner Tikaram Sharma. He did not dispute the identity and eligibility of the petitioner, his proposers and the seconders. Another candidate M. K. Prodhon, Respondent No. 3, raised objection against the nomination of the petitioner on the ground of non-mention of the parts of the sub-divisions in the nomination papers. That candidate was duly nominated but he subsequently withdrew. He does not come forward to contest this case. Respondent No. 1 having been declared as elected, he comes to defend his position, but he was not responsible for the rejection of the nomination papers of the petitioner. It being a case of error of judgment on the part of the Returning Officer and the defect being of a technical nature, we are of the opinion that the Respondent No. 1 cannot be saddled with any cost. We accordingly hold that the parties will bear their own costs.

ORDER

This Tribunal declares the election of Kalimpong Assembly Constituency to the West Bengal Legislative Assembly, held on 15th January 1952 as wholly void.

Parties are left to bear their own costs.

(Sd.) S. C. RAI CHAUDHURI.

10-10-52

Chairman, Election Tribunal

(Sd.) M. N. GAN,

10-10-52

Member, Election Tribunal

(Sd.) S. K. BHOSLE,

10-10-52

Member, Election Tribunal.

Calcutta,

Dated 10th October, 1952.

No. 125-E. T.

Copy forwarded to the Election Commission, as required under section 103 of the Representation of the People Act, 1951, for taking necessary action.

(Sd.) CHAIRMAN,
Election Tribunal

P. S. SUBRAMANIAN
Officer on Special Duty